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Attorneys for Plaintiff Estate of Wendy Irvin

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

HOLLY HAYWARD, Personal Representative,  
Of the Estate of Wendy Irvin, Deceased,

Plaintiff,

v.

NORTHWEST HUMAN SERVICES, INC., an  
Oregon corporation doing business as WEST  
SALEM CLINIC; and SALEM HEALTH, an  
Oregon corporation doing business as SALEM  
HOSPITAL,

Defendants.

**Case No.** \_\_\_\_\_

**COMPLAINT**

Wrongful Death – Medical Malpractice  
(Federal Tort Claims Act)

**PARTIES**

1.

Holly Hayward is a resident of Salem Oregon and is the duly appointed personal representative of the Estate of her late mother, Wendy Irvin. Wendy Irvin died on April 28, 2022. Pursuant to ORS 30.020, the beneficiaries of the wrongful death claim are Holly Hayward (daughter), Zachary Irvin (son) and Marie Hall (mother).

2.

Northwest Human Services, Inc. is an Oregon corporation doing business as West Salem Clinic (hereinafter referred to as West Salem Clinic) and is engaged in the business of providing medical care in the state of Oregon. West Salem Clinic is a Federally Qualified Community Health Center subject to the Federal Tort Claims Act.

3.

Salem Health is an Oregon corporation doing business as Salem Hospital and is engaged in the business of providing medical care in the state of Oregon.

**JURISDICTION**

4.

Because defendant West Salem Clinic is a federal entity, subject to the Federal Tort Claims Act, jurisdiction in this court is proper under 28 U.S. Code §1346 (United States as defendant). The Tort Claim Notice required by 28 U.S. Code §2401 was given on March 3, 2023 more than six months prior to the filing of this complaint.

5.

Jurisdiction as to Salem Health is proper under 28 U.S. Code §1367 (supplemental jurisdiction) because plaintiff's claim against Salem Health is so related to her claims against West Salem Clinic that they form part of the same case or controversy.

**FACTUAL ALLEGATIONS**

6.

On April 28, 2022 Wendy Irvin died from cardiopulmonary arrest caused by a Necrotizing Soft Tissue Infection (herein after NSTI), commonly referred to as "Flesh Eating Bacteria". NSTI includes Necrotizing fasciitis an infection of the deep soft tissues that results in the rapid destruction of the muscle fascia and overlying subcutaneous fat.

7.

At the time of her death, Ms. Irvin was 54 years old, was 5 foot 3 inches, weighed approximately 160 lbs. and had a BMI of approximately 27.

8.

At all times material, West Salem Clinic acted through its employees and agents, including Sandra Fulkerson Schaeffer PA-C.

9.

At all times material, Salem Health acted through its employees and agents, including Peter Hakim DO and Mathew Pitzer DO.

10.

Between April 26, 2022 and her death on April 28, 2022, Ms. Irvin treated, as a patient with West Salem Clinic and Salem Health, with symptoms, clinical findings and laboratory results supporting a diagnosis that she was suffering from a Necrotizing Soft Tissue Infection.

11.

At no time prior to her death did any of the employees or agents of West Salem Clinic and Salem Health diagnose or treat Ms. Irvin's NSTI.

12.

At all times material, the employee and agents of West Salem Clinic who provided medical care to Ms. Irvin, including but not limited to Sandra Fulkerson Schaefer PAC, knew or should have known the following:

- (a) Early diagnosis and treatment of NSTI is critical to preventing death because NSTI presents acutely and extensive tissue destruction occurs rapidly leading to systemic toxicity, limb loss and/or death;
- (b) Accurate diagnosis and appropriate of treatment of an NSTI includes early surgical intervention and antibiotic therapy;
- (c) NSTI's responds well to antibiotics and surgery;
- (d) NSTI's are likely to require intensive care;
- (e) NSTI occurs in healthy individuals;
- (f) Risk factors associated with NSTI includes skin breach due to Shingles (Herpes Zoster), Contact Dermatitis and/or Cellulitis, along with obesity and having experienced childbirth;
- (g) NSTI most commonly involves the extremities; and
- (h) Clinical manifestations of NSTI include:
  - i. Rapid progression of symptoms, including new onset of swelling aggravated by cold, heat and local pressure;

- ii. Vesicular rash (fluid-filled blisters);
  - iii. Rash that resembles other skin conditions, including Contact dermatitis and Cellulitis;
  - iv. Severe Burning pressure pain;
  - v. Inadequate pain control;
  - vi. Decreased mobility of the affected area;
  - vii. Skin discoloration of the affected area;
  - viii. Skin that is warm to the touch on the affected area; and
  - ix. Skin that is pruritic (itchy) on the affected area.
- (i) Laboratory findings are helpful in determining if a patient is suffering from NSTI including elevated inflammatory markers like White Blood Cell Count, C-reactive Protein and Erythrocyte; and
- (j) Tissue cultures are helpful in determining if a patient is suffering from NSTI.

13.

On April 26, 2022 at approximately 11am, Ms. Irvin presented to West Salem Clinic with the following clinical manifestations:

- (a) Rapid new onset of swelling in her left arm and hand, aggravated by cold, heat and local pressure;
- (b) Vesicular rash (fluid-filled blisters);
- (c) Burning pressure pain of 7 out of 10;
- (d) Decreased mobility of the left hand and arm;
- (e) Skin discoloration of the left extremity;
- (f) Skin that was warm to the touch on the left extremity;

(g) Skin that was pruritic (itchy) on the left extremity.

14.

On April 26, 2022 West Salem Clinic did not order any laboratory tests for Ms. Irvine and at approximately 12pm diagnosed Ms. Irvin with Shingles (Herpes Zoster) without complication and Contact Dermatitis. No treatment for NSTI was provided to Ms. Irvin.

15.

On April 26, 2022 at approximately 1pm Sandra Fulkerson Schaeffer PA-C documented her clinical findings in a medical chart note that was available to employees and agents of Salem Health, including Peter Hakim DO and Mathew Pitzer DO, when they provided medical care to Ms. Irvin as described below.

16.

At all times material, the employee and agents of Salem Health who provided medical care to Ms. Irvin, including but not limited to Peter Hakim DO and Mathew Pitzer DO, knew or should have known the following:

- (a) Early diagnosis and treatment of NSTI is critical to preventing death because NSTI presents acutely and extensive tissue destruction occurs rapidly leading to systemic toxicity, limb loss and/or death;
- (b) Accurate diagnosis and appropriate of treatment of an NSTI includes early surgical intervention and antibiotic therapy;
- (c) NSTI's responds well to antibiotics and surgery;
- (d) NSTI's are likely to require intensive care;
- (e) NSTI occurs in healthy individuals;

- (f) Risk factors associated with NSTI includes skin breach due to Shingles (Herpes Zoster), Contact Dermatitis and/or Cellulitis, along with obesity and having experienced childbirth;
- (g) NSTI most commonly involves the extremities; and
- (h) Clinical manifestations of NSTI include:
  - i. Rapid progression of symptoms, including new onset of swelling aggravated by cold, heat and local pressure;
  - ii. Vesicular rash (fluid-filled blisters);
  - iii. Rash that resembles other skin conditions, including Contact dermatitis and Cellulitis;
  - iv. Sever Burning pressure pain;
  - v. Inadequate pain control;
  - vi. Decreased mobility of the affected area;
  - vii. Skin discoloration of the affected area;
  - viii. Skin that is warm to the touch on the affected area; and
  - ix. Skin that is pruritic (itchy) on the affected area.
- (i) Laboratory findings are helpful in determining if a patient is suffering from NSTI including elevated inflammatory markers like White Blood Cell Count, C-reactive Protein and Erythrocyte; and
- (j) Tissue cultures are helpful in determining if a patient is suffering from NSTI.

17.

Approximately 4 hours after Ms. Irvin was discharged from the West Salem Clinic on April 26, 2022, at approximately 5pm, Ms. Irvin presented to Salem Health's Emergency Department at Salem Hospital with the following clinical manifestations:

- a) Left forearm swelling that increased throughout the day extending into the hand with tight feeling and pain of a 6 out of 10;
- b) Vesicular lesions over the left thumb extending to the left dorsal hand; and
- c) Inadequate pain control.

18.

On April 26 2022, Salem Health conducted laboratory tests which produced findings that Ms. Irvin was suffering from NSTI including an elevated White Blood Cell Count.

19.

On April 26, 2022 at approximately 6:44pm Salem health diagnosed Ms. Irvin with Shingles (Herpes Zoster) without complication. No treatment for NSTI was provided to Ms. Irvin. She was given "strict return precautions."

20.

Approximately nine hours later on April 27, 2022 at 3:46am, Ms. Irvine returned to Salem Hospital and reported that her pain was increasing, her swelling was worsening and that her swelling was extending up towards her elbow. No laboratory tests were conducted. No treatment for NSTI was provided to Ms. Irvin. She was diagnosed with Shingles (Herpes Zoster) and told to return if her symptoms worsen or new symptoms develop. She was discharged at approximately 5am.



21.

Approximately 5 hours later at 10am on April 27, 2021 Ms. Irvin returned to the West Salem Clinic suffering “weeping” pain. Bullae (large blisters) were observed on her left arm. She was diagnosed with Shingles (Herpes Zoster) and told that the “ER ruled out other dangerous causes of the pain.” She was discharged at 11:17am.

22.

When Sandra Fulkerson Schaeffer PA-C told Ms. Irvin that the “ER ruled out other dangerous causes of the pain,” the Salem Health medical chart notes documenting Ms. Irvin’s April 26, 2022 and April 27, 2022 Emergency Depart visits were available to them including the discharge instruction stating that Ms. Irvin was placed on “strict return precautions.” Ms. Schaeffer’s statement to Ms. Irvin that the “ER ruled out other dangerous causes of the pain” was not accurate.

23.

Approximately 13 hours later at 12am on April 28, 2022, Ms. Irvin was found suffering from altered consciousness and she was transported by ambulance to the Emergency Department at Salem Hospital. Her left arm was “discolored, with skin sloughing off.” Diffuse angry sores were noted on the left arm. She was diagnosed with an NSTI – Necrotizing Fasciitis – and died at 2:29am when she went into cardiopulmonary arrest. Sandra Fulkerson Schaeffer PA-C concluded and documented on Ms. Irvin’s death certificate that Ms. Irvin died from as a result of Necrotizing Fasciitis that was present two days, April 26, 2022, prior to her death on April 28, 2022.

24.

Had West Salem Clinic and/or Salem Health diagnosed and treated Ms. Irvin's Necrotizing Fasciitis at any one of the four medical visits between April 26, 2022 and April 27, 2022, then Ms. Irvin would have survived.

**FIRST CLAIM FOR RELIEF**

**(Medical Negligence)**

For her first claim for relief, as to West Salem Clinic, Plaintiff alleges:

25.

Plaintiff realleges and incorporates by reference hereto paragraphs 1 through 24 above.

26.

West Salem Clinic held itself out to the public, including Ms. Irvin, as possessing that degree of care, skill and diligence used by ordinarily careful medical providers. West Salem Clinic failed to meet this standard of care and was negligent in failing to diagnose and treat Ms. Irvin's NSTI. As a foreseeable result of West Salem Clinic's negligence Ms. Irvin suffered the harms described more fully below.

**SECOND CLAIM FOR RELIEF**

**(Medical Negligence)**

For her first claim for relief, as to Salem Health, Plaintiff alleges:

27.

Plaintiff realleges and incorporates by reference hereto paragraphs 1 through 24 above.

28.

Salem Health held itself out to the public, including Ms. Irvin, as possessing that degree of care, skill and diligence used by ordinarily careful medical providers. Salem Health failed to meet this standard of care and was negligent in failing to diagnose and treat Ms. Irvin's NSTI. As a foreseeable result of West Salem Clinic's negligence Ms. Irvin suffered the harm described more fully below.

### **DAMAGES**

29.

Plaintiff realleges and incorporates by reference hereto all the paragraphs above.

30.

As a foreseeable and/or direct result of defendant's acts and omissions alleged herein, plaintiff suffered the following harms:

- A. Reasonable charges necessarily incurred for doctors' services, hospital services, nursing services, other medical services, burial services and/or memorial services rendered for the decedent, in an amount to be determined at trial and not to exceed \$20,000.00;
- B. A reasonable amount that would have compensated Ms. Irvin for disability, pain, and suffering caused by defendant's failure to diagnose and treat her NSTI, in an amount to be determined at trial and not to exceed 1 million dollars;
- C. A reasonable amount that justly, fairly and reasonably compensates the estate and/or beneficiaries for pecuniary loss to Ms. Irvin's estate and/or beneficiaries, in an amount to be determined at trial and not to exceed \$ 980,000.00.

- D. A reasonable amount that justly, fairly and reasonably compensates decedent's beneficiaries for loss of the society, companionship and services of the decedent, in an amount to be determined by the jury and not to exceed 1.5 million dollars;

**PRAYER**

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, as follows:

- A. Economic damages for reasonable charges necessarily incurred for doctors' services, hospital services, nursing services, other medical services, burial services and/or memorial services rendered for the decedent, in an amount to be determined at trial and not to exceed \$20,000.00, subject to future amendment;
- B. Non-economic damages for disability, pain, and suffering during the period between injury to Ms. Irvin and her death, in a reasonable amount to be determined at trial and not to exceed 1 Million Dollars, subject to future amendment;
- C. Economic damages in an amount that justly, fairly and reasonably compensates the estate and/or beneficiaries for pecuniary loss to the decedent's estate and/or beneficiaries, in a reasonable amount to be determined by at trial and not to exceed \$ 980,000.00, subject to future amendment;
- D. Non-economic and economic damages in an amount that justly, fairly and reasonably compensates decedent's beneficiaries for loss of the society, companionship and services of the decedent, in a reasonable amount to be determined at trial and not to exceed 1.5 Million Dollars, subject to future amendment;

- E. Pre- and post-judgment interest as allowed by law;
- F. For plaintiff's costs and disbursements incurred herein;
- G. For other relief the Court deems just and equitable;

DATED: April 22, 2024.

/s/ Clayton Huntley Morrison  
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Attorney for Plaintiff